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Attorneys for Plaintiffs
13 Sunil Kumar, Ph.D. and Praveen Sinha, Ph.D.

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 SUNIL KUMAR, Ph. D
PRAVEEN SINHA, Ph. D.,

17 Plaintiffs,

18 v.

19 DR. JOLENE KOESTER, in her official
20 capacity as Chancellor of California State
University,

21 Defendant.

Case No. 2:22-CV-07550-RGK-MAA

**OBJECTIONS TO
DISPUTED FACTS**

Judge: R. Gary Klausner
Trial: October 24, 2023
(on the briefs)

OBJECTIONS TO DISPUTED FACTS¹

Plaintiffs Sunil Kumar and Praveen Sinha (“Plaintiffs”) respectfully submit the following Objections to the Disputed Facts jointly filed by the parties:

DISPUTED FACT NO. 39. There is not one universally accepted definition of “ethnicity.”

OBJECTION: Plaintiffs object to this Disputed Fact based on relevance, as the term “ethnicity” is not an issue in this case. That term has no bearing on any claim or defense in this matter.

DISPUTED FACT NO. 40. There is not one universally accepted definition of “religion.”

OBJECTION: Plaintiffs object to this Disputed Fact based on relevance, as the term “religion” is not an issue in this case. That term has no bearing on any claim or defense in this matter.

DISPUTED FACT NO. 41. There is not one universally accepted definition of “sex.”

OBJECTION: Plaintiffs object to this Disputed Fact based on relevance, as the term “sex” is not an issue in this case. That term has no bearing on any claim or defense in this matter.

DISPUTED FACT NO. 42. Caste systems are descent-based systems of social stratification that exists in many parts of the world, including South Asia, East Asia, Africa, and the Americas. [Expert Report by Dr. Ajantha Subramanian (“Subramanian Report”) 3 (available at ECF No. 115-30, which is Exh. 26 to Michalowski Decl.).]

¹ The objections herein apply to Defendant’s Statement of Undisputed Facts in support of Defendant’s Motion for Summary Judgment (ECF No. 115), which were not jointly prepared or provided to Plaintiffs in advance. Accordingly, those “facts” are not necessarily undisputed as Defendant represents.

1 **OBJECTION:** Plaintiffs’ object to this Disputed Fact on the grounds that, by
2 definition, this statement is based on an expert “opinion” and, therefore, is not a “fact.”
3 Plaintiffs object further on the grounds that expert testimony is improper to address the
4 two issues remaining in this case: (1) whether CSU’s inclusion of caste in the Policy is
5 unconstitutionally vague; and (2) whether the Policy violates the Establishment Clause
6 by taking an official position on Hinduism. First, whether a law is unconstitutionally
7 vague requires that the Court consider whether the Policy gives a “person of *ordinary*
8 *intelligence* a reasonable opportunity to know what is prohibited, so that he may act
9 accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)) (emphasis
10 added). It is entirely irrelevant what any of Defendant’s experts think regarding
11 caste. In fact, CSU’s experts seek to determine how *courts* – not the “person of
12 ordinary intelligence” – should interpret caste. *See, e.g.*, Defendant’s Trial Brief (ECF
13 No. 115) at pp. 23-25. Second, as the Ninth Circuit explained in *Calif. Parents for the*
14 *Equalization of Educational Materials v. Torlakson*, 973 F.3d 1010, 1021, (9th Cir.
15 2020), in evaluating whether an Establishment Clause violation exists courts must view
16 the challenged terms “from the perspective of an objective, reasonable, observer, and
17 not that of an academic who is an expert in the field.” Indeed, “[a]n expert’s
18 understanding of the terms is irrelevant.” *Id.* Thus, this Court should disregard any
19 expert opinion in this matter.

20
21 **DISPUTED FACT NO. 43.** Caste is not coextensive with Hinduism or any
22 other religion. [Subramanian Report, 7-10 (ECF No. 115-30).]

23 **OBJECTION:** Plaintiffs’ object to this Disputed Fact on the grounds that, by
24 definition, this statement is based on an expert “opinion” and, therefore, is not a “fact.”
25 Plaintiffs object further on the grounds that expert testimony is improper in this matter
26 for the reasons set forth above in their Objection to Disputed Fact No. 42, which is
27 incorporated herein by reference as if set forth in full.

1 **DISPUTED FACT NO. 44.** Caste is not coextensive with India or South Asia.
2 [Subramanian Report, 3-4 (ECF No. 115-30); Expert Report of Professor Frank S.
3 Ravitch (“Ravitch Report”), 9-10 (available at ECF No. 115-33, which is Exh. 28 to
4 the Declaration of Frank S. Ravitch (“Ravitch Decl.”) (ECF No. 115-32).]

5 **OBJECTION:** Plaintiffs’ object to this Disputed Fact on the grounds that, by
6 definition, this statement is based on an expert “opinion” and, therefore, is not a “fact.”
7 Plaintiffs object further on the grounds that expert testimony is improper in this matter
8 for the reasons set forth above in their Objection to Disputed Fact No. 42, which is
9 incorporated herein by reference as if set forth in full.

10
11 **DISPUTED FACT NO. 46.** The Merriam-Webster dictionary contains
12 multiple definitions of “race:”

13 1 a. see usage paragraph below : any one of the groups that humans are
14 often divided into based on physical traits regarded as common among people of
15 shared ancestry

16 b. dated : a group of people sharing a common cultural, geographical,
17 linguistic, or religious origin or background

18 c. archaic : the descendants of a common ancestor : a group sharing a
19 common lineage

20 2 a: a group of living things considered as a category

21 b archaic : BREED

22 3 biology : a group within a species that is distinguishable (as
23 morphologically, genetically, or behaviorally) from others of the same species
24 also : a usually informal taxonomic category representing such a group that is
25 often considered equivalent to a subspecies

26 4 archaic : a group of people sharing some habit or characteristic (such as
27 profession or belief)

28 [Merriam-Webster, <https://www.merriam-webster.com/dictionary/race>]

1 **OBJECTION:** Plaintiffs object to this Disputed Fact based on relevance, as
2 the term “race” is not an issue in this case. That term has no bearing on any claim or
3 defense in this matter.

4
5 **DISPUTED FACT NO. 47.** The Merriam Webster dictionary contains two
6 definitions of the term “ethnicity:”

7 1: ethnic quality or affiliation

8 2: a particular ethnic affiliation or group.

9 Both definitions turn on multiple definitions of the term “ethnic:”

10 1a: of or relating to large groups of people classed according to common racial,
11 national, tribal, religious, linguistic, or cultural origin or background

12 b: being a member of a specified ethnic group

13 c: of, relating to, or characteristic of a minority ethnic group

14 2: of or relating to the Gentiles or to nations not converted to Christianity:

15 PAGAN

16 [Merriam-Webster, <https://www.merriam-webster.com/dictionary/ethnicity>;

17 Merriam-Webster, <https://www.merriam-webster.com/dictionary/ethnic>]

18 **OBJECTION:** Plaintiffs object to this Disputed Fact based on relevance, as
19 the term “ethnicity” is not an issue in this case. That term has no bearing on any
20 claim or defense in this matter.

21
22 **DISPUTED FACT NO. 48.** The Merriam-Webster dictionary contains multiple
23 definitions of “sex,” and a usage note stating that “usage of sex and gender is by no
24 means settled.”

25 1a: either of the two major forms of individuals that occur in many species and
26 that are distinguished respectively as female or male especially on the basis of
27 their reproductive organs and structures

28 b: the sum of the structural, functional, and sometimes behavioral

1 characteristics of organisms that distinguish males and females

2 c: the state of being male or female

3 d: males or females considered as a group

4 2a: sexually motivated phenomena or behavior

5 b: SEXUAL INTERCOURSE

6 3: GENITALIA

7 [Merriam-Webster, <https://www.merriam-webster.com/dictionary/sex>]

8 **OBJECTION:** Plaintiffs object to this Disputed Fact based on relevance, as the
9 term “sex” is not an issue in this case. That term has no bearing on any claim or defense
10 in this matter.

11
12 **DISPUTED FACT NO. 61.** CSU did not intend for its Policy to target
13 Hinduism or any other religion. [Anson Decl. ¶ 8 (ECF No. 115-4); Anson Dep. Tr.
14 49:25-50:3, 73:6-11 (ECF No. 115-13).]

15 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
16 not a “fact” but a legal conclusion and/or opinion not supported by the record.

17
18 **DISPUTED FACT NO. 62.** The Policy prohibits caste discrimination by all
19 members of the CSU community, regardless of their religion or national origin. [See
20 Sinha Dep. Tr. 135:13–136:15 (ECF No. 115-22); Kumar Dep. Tr. 81:10–18 (ECF No.
21 115-15).].

22 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it
23 refers to a written document that speaks for itself. Accordingly, Plaintiffs refer the
24 Court to that document.

25
26 **DISPUTED FACT NO. 64.** The Nondiscrimination Policy has not been
27 enforced against Plaintiffs on the basis of caste. [Kumar Dep. Tr. 146:16–147:21 (ECF
28 No. 115-14); Sinha Dep. Tr. 27:10–28:22 (ECF No. 115-22); Pls.’ Resp. to Def.’s

1 Interrogs. 8:11-9:25 (ECF No. 115-9).]

2 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
3 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
4 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
5 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
6 Establishment Clause and Due Process claims.

7
8 **DISPUTED FACT NO. 65.** No one has threatened to enforce the
9 Nondiscrimination Policy against Plaintiffs on the basis of caste. [Kumar Dep. Tr.
10 146:16 –147:21 (ECF No. 115-15); Sinha Dep. Tr. 27:10–28:22 (ECF No. 115-22); Pl.
11 Kumar’s Resp. to Def.’s Req. for Admis. 4:8-10 (ECF No. 115-10), which is Exh. 6 to
12 Michalowski Decl.; Pl. Sinha’s Resp. to Def.’s Req. for Admis. 4:12-21 (ECF No. 115-
13 11), which is Exh. 7 to Michalowski Decl.].

14 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
15 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
16 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
17 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
18 Establishment Clause and Due Process claims.

19
20 **DISPUTED FACT NO. 66.** Plaintiffs are unaware of any actions taken against
21 them due to the addition of “caste” to the Policy. [Pls.’ Resp. to Def.’s Interrogs. 8:11-
22 9:25 (ECF No. 115-9).]

23 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
24 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
25 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
26 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
27 Establishment Clause and Due Process claims.

1 **DISPUTED FACT NO. 67.** “Both [Plaintiffs] hold the sincere religious belief
2 that neither caste nor a discriminatory caste system are in any way part of the Hindu
3 religion or its teachings.” [First Amended Complaint ¶ 18.]

4 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
5 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
6 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
7 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
8 Establishment Clause and Due Process claims.

9
10 **DISPUTED FACT NO. 68.** Plaintiff Kumar’s religious beliefs do not require
11 him to treat people of different castes differently. [Kumar Dep. Tr. 108:13–20 (ECF
12 No. 115-15).]

13 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
14 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
15 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
16 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
17 Establishment Clause and Due Process claims.

18
19 **DISPUTED FACT NO. 69.** Plaintiff Kumar cannot identify any way in which
20 he has changed his religious beliefs or practice because of the Nondiscrimination
21 Policy and states “there is no reason to change [his] beliefs so far.” [Kumar Dep. Tr.
22 106:13–14, 11:11 (ECF No. 115-15).].

23 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
24 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
25 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
26 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
27 Establishment Clause and Due Process claims.

1 **DISPUTED FACT NO. 70.** Plaintiff Sinha’s religious beliefs do not require
2 him to treat people of different castes differently. [Sinha Dep. Tr. 91:6–9 (ECF No.
3 115-22).]

4 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
5 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
6 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
7 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
8 Establishment Clause and Due Process claims.

9
10 **DISPUTED FACT NO. 71.** Plaintiff Sinha has not changed his religious beliefs
11 or practice due to CSU’s implementation of the Nondiscrimination Policy. [Sinha Dep.
12 90:23–91:5 (ECF No. 115-22).]

13 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
14 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
15 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
16 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining
17 Establishment Clause and Due Process claims.

18
19 **DISPUTED FACT NO. 72.** CSU’s Nondiscrimination Policy has not required
20 any religious organization of which plaintiffs are members to alter its doctrines and/or
21 teachings, or to alter its internal policies, procedures or practices. [Pl. Kumar’s Resp.
22 to Def.’s Req. for Admis. 5:3-23 (ECF No. 115-10), which is Exh. 6 to Michalowski
23 Decl.; Pl. Sinha’s Resp. to Def.’s Req. for Admis. 5:14-6:7 (ECF No. 115-11), which
24 is Exh. 7 to Michalowski Decl.]

25 **OBJECTION:** Plaintiffs object to this Disputed Fact on the grounds that it is
26 irrelevant. Specifically, Plaintiffs assert a facial challenge to the Nondiscrimination
27 Policy’s inclusion of the undefined term “caste.” This is not an as-applied
28 challenge. Therefore, this fact has no bearing whatsoever on Plaintiffs’ remaining

1 Establishment Clause and Due Process claims.

2 Respectfully submitted,

3
4 Dated: October 3, 2023

FOX ROTHSCHILD LLP

5 By: */s/ John J. Shaeffer*

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